Capital Jury Sentencing Recommendations:

The Relationship Between Mental Illness-Related Mitigating Factors and Life Versus Death Decisions

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Melinda F. Wolbransky

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Dedication

for

My parents, Steve and Brenda Wolbransky.

Without your love and support, nothing would be possible.

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Abstract

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Melinda F. Wolbransky

Naomi E. Goldstein, Ph.D.

Over the past 10 years, the United States Supreme Court has created two categorical exceptions to the death penalty: the young and individuals with mental retardation. Researchers and scholars have suggested that defendants diagnosed with severe mental illnesses will be the next categorical exclusion, a decision that could affect up to 10% of death row inmates. It is, therefore, critical to evaluate jury decision making in capital cases as it relates to mental illness – a factor that will be taken into consideration if the Court decides to hear this issue. The present study examined archival court data from 368 North Carolina capital cases. We evaluated how mitigating circumstances related to male defendants' (N=326) mental illness related to juries' capital sentencing decisions. Results suggest that the relationship between mental illness-related mitigating factors and jury decision making may differ depending on the specific mitigating factor presented to the jury. Both statutorily defined mental illness-related mitigating factors—("capacity to appreciate wrongfulness or conform conduct" and "mental or emotional disturbance") – were significantly related to sentencing decisions. However, neither the (1) presentation of, nor (2) jury agreement with non-statutory mental illness-related mitigating factors were significant predictors of sentencing decision. The broad legal implications for defense attorneys, mental health experts, judges, and policy makers are discussed.

1. Background and Literature Summary

Mental illness is an important consideration in many death penalty cases, with approximately 5 to 10% of death row inmates suffering from a severe mental illness[1] (Cunningham & Vigen, 2002; Mental Health America, 2006). After the Supreme Court established two categorical exceptions to the death penalty – offenders who are mentally retarded (*Atkins v. Virginia*, 2002) and those who were under the age of 18 at the time of the offense (*Roper v. Simmons*, 2005) – many researchers and scholars believe that offenders diagnosed with a severe mental illness would be the next group to be categorically excluded from capital punishment. If presented with this issue, the Court would determine whether the practice violates the Eighth Amendment's cruel and unusual punishment clause by analyzing objective indices of community values, including jury sentences. It is, therefore, important to consider the impact of a defendant's mental illness on jury decision making in the capital context.

1.1 Death Penalty Jurisprudence

The Eighth Amendment of the United States Constitution prohibits "cruel and unusual" methods of punishment (Granucci, 1969; U.S. Const. amend. VIII). Courts analyzing an Eighth Amendment violation frequently employ the proportionality principle, deciding whether the punishment is *grossly disproportionate* to the defendant's criminal offense (Winick, 2009; e.g., *Coker v. Georgia*, 1977; *Gregg v. Georgia*, 1976). A punishment is "grossly disproportionate" if it does not comport with human dignity, as measured by "the evolving standards of decency" (*Trop v. Dulles*, 1956, p. 101). In

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[1] Consistent with the definition provided by NIMH (1987), the following diagnoses are included in this article's definition of severe mental illness: Schizophrenia and other psychotic disorders, Bipolar Disorder, Major Depressive Disorder and other clusters of symptoms that have the potential to substantially affect an individual's interpersonal and vocational functioning

Furman v. Georgia (1972) the Supreme Court held that the death penalty, as applied, was cruel and unusual punishment in violation of the Eighth Amendment. The majority argued that death penalty statutes provided juries too much discretion, which resulted in arbitrary imposition of the death penalty (*Furman v. Georgia*, 1972). In response to *Furman*, states passed new death penalty legislation to counter the Court's criticisms. Four years later, in *Gregg v. Georgia* (1976), the Supreme Court lifted the moratorium on capital punishment when it upheld the constitutionality of these new statutes. As a result, all death penalty statutes now provide juries with more guidance, less discretion, and capital trials bifurcated into a guilt and sentencing phase (Bentele & Bowers, 2001).

Recent trends indicate a decline in the imposition and effectuation of the death penalty in the United States (Bureau of Justice Statistics, 2010). Similarly, a comparable trend exists internationally, with 129 nations either de facto or de jure abolitionist (Babcock, 2007). Nonetheless, the United States continues to impose the death penalty in 37 jurisdictions.[2]

Defendants receive individualized sentencing determinations that focus on each defendant's character and the circumstances surrounding the offense. In determining whether to recommend life without the possibility of parole (LWOP) or death, juries are asked to weigh evidence of aggravating and mitigating circumstances. The prosecution must prove statutorily defined aggravating circumstances, which limit the application of the death penalty to those who are most deserving (*Zant v. Stephens*, 1983). Conversely, the defense is not limited to statutorily defined mitigating circumstances and, instead,

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[2] These jurisdictions include 35 states (AL, AZ, AK, CA, CO, CT, DE, FL, GA, ID, IL, IN, KS, KY, LA, MD, MS, MO, MT, NE, NV, NH, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, & WY), federal prosecutions, and military prosecutions.

may present *any* and *all* mitigating evidence (*Lockett v. Ohio*, 1978). Such evidence (e.g., age, mental capacity, history of childhood abuse) is used to show the jury why the defendant is less morally culpable and, therefore, less deserving of the death penalty. The presence of mental illness is one of the many possible mitigating circumstances.

1.2 Eighth Amendment Violations for Classes of Offenders

The Eighth Amendment proportionality analysis described above requires courts to limit both the type of offenses for which the death penalty can be imposed and the classes of individuals to which it can be applied (Winick, 2009). In 1989, the Supreme Court was asked to determine whether the Eighth Amendment barred capital punishment for two groups of individuals – youth who were 16 and 17 years old at the time of the offense and mentally retarded offenders. In *Stanford v. Kentucky* and *Penry v. Lynaugh*, respectively, the Court held that the imposition of the death penalty on these offenders was constitutional. During the past 10 years, the Supreme Court overturned both of these decisions (*Atkins v. Virginia*, 2002; *Roper v. Simmons*, 2005). In doing so the Court critically analyzed the evolving standards of decency using objective indices of community values, including legislative and congressional judgments, jury sentences, historical developments of practice, public opinions, and international death penalty practices (e.g., *Atkins v. Virginia*, 2002; *Kennedy v. Louisiana*, 2008; *Roper v. Simmons*, 2005).

In *Atkins v. Virginia* (2002), the Court held that imposing the death penalty on offenders with mental retardation violated the Eighth Amendment's prohibition against cruel and unusual punishment. The Court determined that societal attitudes had changed since its holding in *Penry*, and cited the large number of states that had already prohibited

such executions. Further, the majority discussed this class of offenders' reduced culpability, concluding that executing these offenders does not serve the death penalty's purposes (*Atkins v. Virginia*, 2002). Most recently, the Court held that juveniles who are under the age of 18 at the time of the offense cannot receive the death penalty (*Roper v. Simmons*, 2005). After applying, "evolving standards of decency," the Court outlined fundamental differences between juveniles and adults to hold that juveniles are less culpable and must be treated differently.

1.3 Mental Illness in the Criminal Justice System

1.3.1 Prevalence of Mental Illness

The rates of mental illness in the criminal justice system are estimated to be at least double those in the general population (Cunningham & Vigen, 2002). According to the U.S. Department of Justice (2006), more than half of this country's inmate population has a mental health problem (i.e., 56% of state prisoners and 45% of federal prisoners). The prevalence of serious mental illness is also high, with estimates across studies ranging from 7 to 24% of all inmates (Lamb & Weinberger, 1998; Steadman, et al., 1999; U.S. Department of Justice, 2006).

Although the exact number of death row inmates with a mental illness is unknown, research suggests that the rates are even higher than those in the general prison population (Cunningham & Vigen, 2002). For the purpose of the current study, it is particularly important to consider the rates of severe mental illness in the death row population. It has been estimated that 5 to 10% of offenders on death row have a serious mental illness (Cunningham & Vigen, 2002; Mental Health America, 2005). Since 1983,

more than 60 people diagnosed with mental retardation or a mental illness have been executed (Barua, 2008).

1.3.2 Mental Illness in Capital Sentencing

Although the presence of mental illness may be relevant in any type of criminal proceeding (e.g., insanity defense, competency to stand trial), most states explicitly consider mental illness at the time of the offense as a mitigating factor in determining whether to sentence a defendant to death (Izutsu, 2005). Connecticut is currently the only state in which the death penalty cannot be imposed under any circumstances if the jury finds that the defendant was mentally ill at the time of the offense[3] (Conn. Gen. Stat. § 53a-46a(h), 2009). Elsewhere, capital sentencing statutes include mitigating circumstances implicating mental illness, such as "the defendant was under the influence of extreme mental or emotional disturbance," and "the defendant's capacity to appreciate criminality of his or her conduct and conform that conduct to the requirements of law was substantially impaired (American Bar Association, 2002; Izutsu, 2005). As required under *Lockett*, if the defense lawyer presents a defendant's mental illness as mitigating evidence, the jury must not be barred from considering that factor in its sentencing determination.

Even if a defendant is sentenced to death, states are prohibited from executing offenders who are do not "know the fact of their impending execution and the reason for it" (*Ford v. Wainwright*, 1986, p. 422; *Panetti v. Quarterman*, 2007). The *Ford* Court found that carrying out the death penalty on this group of offenders had no deterrent or

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[3] A Connecticut jury cannot sentence a defendant to death if they find "the defendant's mental capacity was significantly impaired or the defendant's ability to conform the defendant's conduct to the requirements of the law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution."

retributive value, concluding that "the execution of an insane person simply offends humanity" (*Ford v. Wainwright*, 1986, p. 407). Despite this ban on *executing* a legally insane offender, the Supreme Court has not yet held that *imposing* the death penalty on offenders with severe mental illness violates the Constitution. As a result, these offenders must present mitigating evidence related to their mental illnesses during their trials' sentencing phase in hopes of receiving a life sentence.

1.4 Prior Research on Mental Illness as a Mitigating Factor

Social scientists and legal scholars have published a great deal of relevant scholarship and research, but only a fraction of the empirical research conducted has focused on the efficacy of mitigating evidence. Researchers assessing mitigating circumstances have employed a number of methodologies, including surveying capital juries (e.g., Garvey, 1998; Geimer & Amsterdam, 1988; Polzer & Kempf-Leonard, 2009), creating jury simulations (e.g., Barnett, Brodsky & Davis, 2004; Barnett, Brodsky & Price, 2007; Tetterton & Brodsky, 2007; White, 1987), and analyzing archival data (e.g., Beck & Schumsky, 1997; Lenza, Keys & Guess, 2005). Despite the high prevalence of mental illness in capital defendants, only a few studies have evaluated mental illness as a mitigating factor.

How jurors evaluate and utilize mitigating evidence in their sentencing determinations, particularly factors implicating mental illness, remains unclear. Studies of both mock jurors and post-verdict surveys of capital juries have revealed that jurors are more likely to recommend life over death when mitigating evidence, including evidence of severe mental illness, is presented to the jury (Barnett, et al., 2004; Barnett, et al., 2007; Garvey, 1998). One study found that the majority of capital jurors may consider

extreme mental or emotional distress at the time of the offense and a history of mental illness as mitigating factors (Garvey, 1998). Research also suggests that a history of hospitalization for mental illness is a strong mitigating factor, as is a defendant "diagnosed with schizophrenia, not medicated, [who] suffered from severe delusions and hallucinations" (Barnett, et al., 2004, p. 762; Barnett, et al., 2007).

Conversely, academics, researchers, and case law suggest that juries may view severe mental illness as an aggravating factor (e.g., Berhman, 1989; *Miller v. State*, 1979[4]; Ryan & Berson, 2006). For example, approximately one-quarter of mock jurors incorrectly indicated that the following statutorily defined mitigating circumstances were aggravating factors: "impaired capacity to appreciate criminality of defendant's conduct" and an "offense committed under the influence of mental or emotional disturbance" (Haney & Lynch, 1994, p. 433). Furthermore, this bias towards viewing mental illness as an aggravating factor may be compounded by the fact that only those jurors who would be able to cast a vote for a death sentence are permitted to sit on a capital jury. It has been shown that these death-qualified jurors may be less likely to find mental illness-related mitigating circumstances than their excluded counterparts (e.g., Butler & Moran, 2007). Some studies suggest that when evidence of severe mental illness is presented to juries, they are actually *more* likely to find a defendant guilty (Ellsworth, Bukaty, Cowan, & Thompson, 1984) and recommend a death sentence (White, 1987).

Even if a capital jury does not improperly consider mental illness evidence as an aggravator, they may still mistakenly disregard it as proper mitigating evidence (*Eddings*

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[4] The Florida Supreme Court vacated a death sentence after it found that the jury had incorrectly considered the defendant's diagnosis of schizophrenia as an aggravating rather than a mitigating factor (*Miller v. State*, 1979).

v. Oklahoma, 1982; e.g., Beck & Shumsky, 1997; Bentele & Bowers, 2001; Polzer & Kempf-Leonard, 2009). There are a few suggested reasons for this misuse of the evidence. First, it has been shown that juries commonly misunderstand capital sentencing instructions and have difficulty defining "mitigation" (e.g., Bentele & Bowers, 2001; Haney & Lynch, 1994). Second, despite contrary Supreme Court precedent (*McKoy v. North Carolina*, 1990; *Mills v. Maryland*, 1988), jurors may also mistakenly believe that to find a circumstance to be mitigating, they must reach that decision unanimously or that the threshold for the decision must reach the beyond a reasonable doubt burden of proof used during the guilt-phase (Bentele & Bowers, 2001). Third, research suggests that jurors erroneously believe the defendant's mental illness must rise to the level of insanity to be mitigating (Bentele & Bowers, 2001; White, 1987). Within this small body of research, it remains unclear exactly how jurors evaluate and utilize mitigating evidence in their capital sentencing determinations.

2. Current Study

The prevalence of mental illness among death row inmates, together with the categorical exceptions carved out in *Atkins*, *Roper*, and *Ford*, lead many to conclude that defendants with severe mental illness at the time of the offense will be the next group of offenders excluded from capital punishment eligibility (e.g., ABA, 2006; Batey, 2009; Slobogin, 2003). If the Supreme Court decides to hear this issue, it seems likely that the Court will follow its analysis in *Atkins* and *Roper* by assessing the evolving standards of decency, as measured by objective indices of community values, to determine whether such executions violate the Eighth Amendment. Evidence related to the presence of mental illness should serve as mitigating evidence when reaching a death

recommendation; however, previous research (e.g., Bentele & Bowers, 2001; Haney & Lynch, 1994; Polzer & Kempf-Leonard, 2009; White, 1987) suggests that juries may not follow these instructions.

Previous research examining the efficacy of mitigating circumstances related to mental illness has not provided the ecological validity of actual capital sentencing hearings. Furthermore, the results are mixed about how jurors view mental illness mitigation and, more importantly, about the impact of such views on sentencing recommendations. Jury simulations allow the researcher to control for confounding variables but fail to reflect the "death is different" reality of capital trials. Although conducting interviews with capital jurors can offer more generalizable conclusions, jurors' retrospective self-reports are prone to bias (Costanzo & Costanzo, 1992). Thus, the current study sought to add to this critical body of research by examining how actual juries view evidence of mental illness and how their agreement with mental illness-related mitigation factors relates to sentencing recommendations. Using archival court data from capital cases to study the impact of mental-illness related mitigation information on juries' decisions will provide a higher level of ecological validity.

The current study evaluated how mitigating circumstances related to male defendant's mental illness were associated with actual juries' decision-making during capital sentencing.[5] The purpose was two-fold: (1) to fill the gap in previous mitigation research by evaluating real-world jury decision-making through the use of archival data; and (2) to examine one of the objective indices of community values under the Eighth

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[5] During the time period in which these cases were on trial, there were 13 cases of women defendants. However, given the rarity of female capital defendants and potential gender-specific issues, these cases were not included in this study (Streib, 2005).

Amendment proportionality analysis by studying actual jury sentences during capital trials.

This type of data is a useful and timely addition to the growing body of commentary calling for the exclusion of offenders with severe mental illness from receiving the death penalty (e.g., Batey, 2009). Proponents have rooted their arguments in the *Atkins*, *Roper*, and *Ford* decisions. Many explain that offenders with severe mental illness are no more culpable than those with mental retardation or those who were under the age of 18 at the time of the offense (e.g., Hornberg, 2005; Izutsu, 2005; Slobogin, 2003). Similarly, a defendant who exhibits symptoms of severe mental illness can adversely impact capital proceedings in ways that are similar to defendants with obvious symptoms of mental retardation (Hornberg, 2005; Izutsu, 2005). Over the past 5 years, a number of professional groups have adopted this position, including the American Bar Associations's House of Delegates, the National Alliance for the Mentally Ill (NAMI), the American Psychological Association, and the American Psychiatric Association (e.g., ABA, 2006). State court justices and federal judges have also voiced their concerns about imposing the death penalty on offenders with severe mental illness (Izutsu, 2005; Shin, 2007). This practice also is at odds with international legal standards (Shin, 2007).

The push for a mental illness categorical exclusion is mostly limited to offenders with severe mental illness[6] (e.g., ABA, 2006; Ryan & Berson, 2006; Wilkins, 2009). However, the present research was not limited to severe mental illness because the

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[6] The ABA's Task Force on Mental Disability and the Death Penalty's definition of severe mental illness included the following diagnoses: schizophrenia and other psychotic disorders, bipolar disorder, major depressive disorder, and dissociative disorders (ABA, 2006). However, NAMI and the international community appear to prefer a complete bar against executing offenders with any mental illness.

availability of case-specific severity information was incomplete. Instead, the goal of the primary research question (and analyses) was to accurately study the presentation of mental illness-related mitigating evidence to juries. Broadening the scope beyond severe mental illness also allowed this study to cover its dual aims described above by accurately examining real-world capital jury decision making, one of the objective indicia of community values used to determine whether imposing this punishment is cruel and unusual. The current study, therefore, provides novel, timely, and relevant information to policymakers, practitioners, and researchers about the efficacy of mental illness-related mitigation.

2.1 Primary Hypothesis

Based on previous research, the hypotheses originally proposed to examine sentencing decisions from two independent variables, each examined separately: (1) the presentation of mental illness-related mitigating factors to the jury, and (2) jury agreement with the mitigating value of those factors when presented to the jury. However, after preliminary analyses were conducted, it was determined that presentation of mental illness-related mitigating factors and jury agreement with such factors could not be separated. This was due to the fact that information about jury agreement was unavailable in those cases in which mental illness-related mitigating factors were not presented to the jury.

Thus, the primary revised research question integrated these two predictor variables and examined whether sentencing recommendation (i.e., probability of death) was related to (1) whether the jury agreed with a mental illness-related mitigating factor when it was presented, (2) whether the jury disagreed with a mental illness-related

mitigating factor when it was presented, or (3) when no mental-illness related mitigating factor was presented to the jury. Given this more accurate representation of the current study's goals, the original secondary hypothesis became the primary hypothesis: Jury agreement with a presented mental illness-related mitigating factor (i.e., that it was in fact mitigating) would predict a greater probability that the jury recommended a life sentence (instead of death), compared to when the jury disagreed that the presented factor was mitigating or when the factor was not presented to the jury at all. A mediating relationship could not be evaluated because the intended mediator (agreement) was only available when a mental illness-related mitigating factor was presented (agreement was not questioned when the factor was not presented to the jury).

2.2 Exploratory Analyses

The relationship between sentencing recommendations and two additional predictor variables was explored: (1) serious mental illness (i.e., whether the jury agreed with serious mental illness as a mitigating factor when it was presented, whether the jury disagreed with serious mental illness as a mitigating factor when it was presented, and when serious mental illness was not presented as a mitigating factor to the jury), and (2) the specific combination of mental illness-related mitigating factors the jury agreed upon as mitigating when they were presented to the jury.

Lastly, the following exploratory hypothesis was proposed: the relationship between jury sentencing recommendations and the presentation of mental illness-related mitigating factors would depend on trial year. Specifically, the relationship was examined between capital trials before and after 1989, the year the *ABA Guidelines for*

the Appointment and Performance of Counsel in Death Penalty Cases was published, and before and after 1994, the year in which LWOP was made available in North Carolina.

3. Method

3.1 Data Collection

3.1.1 Participants

The current study examined a large, archival database that included all (N = 368) of the publicly available capital cases in North Carolina between 1982 and 1998. The database included both demographic and case-specific variables for each case. Of the original 368 capital defendants within the dataset, a total of 326 were included in the analyses. Thirteen cases with female defendants were excluded because of the potential uniqueness of these female defendants, and 29 cases were excluded in which the original sentence was overturned and the defendant subsequently received a new sentencing hearing.[7] Approximately half (48.9%) of the capital defendants were identified as African American, 45.5% as white, 3.1% as American Indian, 0.9% as Hispanic or Latino, 0.3% as Asian, and 0.9% as other. At the time of trial, capital defendants ranged in age from 17 to 65 (M = 31.16, SD = 9.29).

3.1.2 North Carolina's Death Penalty

This dataset of North Carolina capital cases is important for a number of reasons. First, the North Carolina capital sentencing scheme is similar to that in the majority of other states.[8] Its capital sentencing statute enumerates a list of 11 possible statutory aggravating factors and a non-exclusive list of 9 statutory mitigating factors (N.C.G.S.A

[7] This is based on the data available at the time of these analyses. It is possible that other sentences used in this study have since been overturned on appeal; however, that information was not available.

§ 15A-2000(f), 2010). In addition, the defense attorney may ask the jury to consider any other non-statutory mitigating factor. The jury is instructed to weigh the presented aggravating circumstances against the presented mitigating circumstances before deciding whether to recommend life[9] or death. After the jury has deliberated, they are asked to indicate (on documents provided to them) whether or not jurors agreed with the circumstances presented. The comparability of this scheme to other states makes this dataset generalizable beyond North Carolina.

Second, North Carolina currently has the seventh largest death row inmate population with 157 inmates (Death Penalty Info, 2009). It has been estimated that more than 10% of these men and women are diagnosed with a severe mental illness (Common Sense Foundation, 2008). On February 12, 2009, North Carolina General Assembly introduced a bill that would ban the execution of persons with severe mental illness at the time of the offense (H.B. 137, 2009). It did not become law, but it does suggest that North Carolina legislators are aware of the issues surrounding the execution of mentally ill offenders. It is, therefore, important to study mental illness mitigation and jury decision making to aid law makers who intend to introduce similar legislation.

3.2 Data Selection

North Carolina juries may be asked to consider a total of 20 possible statutory aggravating and mitigating circumstances and an unlimited number of non-statutory

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[8] North Carolina is considered a "weighing" state. Of the 34 other jurisdictions that impose the death penalty, 22 (including the federal and military prosecutions) specifically require the jury to *weigh* the aggravating and mitigating circumstances (e.g., AL, CA, PA). The remaining jurisdictions either require the jury to "consider all" of the evidence (e.g., LA, MO, WY), find the mitigating circumstances are not "sufficiently mitigating," (e.g., AZ, MT, OR) or only require a finding that an aggravated circumstance(s) exists before imposing the death penalty (e.g., SC, VA).

[9] While North Carolina currently has LWOP, it did not have this option until 1994. Juries, therefore, did not have this option during the first 12 years the database cases went to trial.

mitigating circumstances. The present study was concerned with three mitigating factors (two statutory and one non-statutory) that implicate mental illness: (1) "The capital felony was committed while the defendant was under the influence of mental or emotional disturbance" (i.e., "mental or emotional disturbance"; N.C.G.S.A § 15A-2000(f)(2)), (2) "The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired" (i.e., "appreciate or conform conduct"; N.C.G.S.A § 15A-2000(f)(6)), and (3) evidence of mental illness presented as a non-statutory mitigating circumstance. See Appendix A for complete list of North Carolina's enumerated mitigating factors. Specifically, this study sought to compare the cases in which juries were presented with mental illness-related mitigation with those cases in which no mental illness mitigation was presented. Of those cases in which mental illness-related mitigating factors were presented, the relationship between jury agreement with each of the factors presented and ultimate sentencing recommendation was also studied. Additionally, the available data on the type of mental illness-related mitigating factors presented to the jury were coded as either severe mental illness or non-severe mental illness (i.e., all other mental illness information). Descriptive results are presented below.

A number of control variables also were selected from the available data.[10] The extant literature on jury decision making was reviewed to determine which aggravating

[10] In determining the best method of data selection, matching cases on important variables was considered. However, this method was ultimately rejected as it would reduce the data pool beyond the requisite number. In addition, the cases that would have been included using this method (i.e., only those cases that matched with another case in the database on important variables) may not have been an accurate representation of the database as a whole and, therefore, may have skewed the data.

and mitigating factors had been found to significantly predict jury sentencing recommendations. It appeared that two aggravating factors were consistently found to relate to jury sentencing recommendations: the heinousness of the crime (Butler & Moran, 2007; Garvey, 1998; Geimer & Amsterdam, 1988; Luginbuhl & Middendorf, 1988; Polzer & Kempf-Leonard, 2009) and the defendant's criminal history (Garvey, 1998; Lenza, Keys, & Guess, 2005). Both of these factors are included in North Carolina's sentencing statute and were included in the primary analyses as control variables (see Appendix A). Further, all of the statutorily defined mitigating and aggravating circumstances were included in additional analyses to explore the relationship between the mental illness-related mitigating factors and jury sentencing recommendations while accounting for all other statutory factors.

Variables were also selected to address post-database changes in death penalty case law. As previously mentioned, it is now unconstitutional to sentence a defendant with mental retardation to death (*Atkins v. Virginia,* 2002). Those cases where evidence of mental retardation was presented to the jury were explored to assess the relationship between the presentation of mental retardation and mental illness-related mitigating factors, and their relationship with jury sentencing recommendations.

3.3 Method of Analysis

Initial analyses were run using Chi-square tests to determine the relationship between presentation/jury agreement regarding mitigating evidence (presented and jury agreed; presented and jury disagreed; not presented) and each of the three mental illness-related mitigating factors. To test the primary hypothesis, logistic regression was used to

examine whether presentation/ jury agreement related to the dichotomous sentencing recommendation (life or death), controlling for heinousness of the crime and criminal history. Additional regression analyses included (a) all of the statutory mitigating and aggravating factors, (b) the presentation and agreement with mental retardation as a mitigating factor, and (c) defendant's race (i.e., white or African American) as a control variable. A further logistic regression equation was also calculated to examine which, if any, of these mental illness-related mitigating factors, or combination of factors, were most likely to result in a life sentence recommendation.

Last, the exploratory hypothesis was examined by simultaneously regressing sentencing recommendation on the presentation of each mental illness-related mitigating factor (yes or no), the time period of the trial (pre-1989, 1989-1994, and post-1994), and the interaction between the presentation of each factor and time period of the trial. Sub-analyses were conducted to examine the interactions between jury agreement with each mental illness-related mitigating factor (agree or disagree) and time period of the trial. A logistic regression equation was calculated for each mental illness-related mitigating factor by only including those cases in which that factor was presented to the jury, simultaneously regressing sentencing recommendation on whether the jury agreed that the factor was mitigating (yes or no), the time period of the trial (pre-1989, 1989-1994, and post-1994), and the interaction between jury agreement and time period of the trial. The odds ratios of significant predictors are provided as effect size estimates, and the correct classification of each model is reported.

4. Results

Initial analyses revealed that an intended control variable (the aggravating factor involving previous conviction of a capital felony or the juvenile equivalent of a capital felony) lacked sufficient variability to be included in further analyses. The seven cases in which this aggravating factor was presented to the jury were removed from the data-set. Analyses revealed that the removal of these seven cases did not significantly affect outcomes. Preliminary analyses also were conducted to evaluate the statistical assumptions of all analyses. All assumptions were met unless otherwise specified.

4.1 Descriptives

As may be seen in Table 1, a total of 182 (57.1%) of the capital defendants received a death sentence, and 137 (42.9%) received a life sentence. At least one mental illness-related mitigating factor was presented to the jury in 241 (75.5%) of the capital cases, and the number presented ranged from 1 to 9 (M = 1.72, SD = 1.49). Most often, both "mental or emotional disturbance," and impaired "capacity to appreciate or conform conduct" (30.7% of cases) were presented to the jury together. Severe mental illness was presented to the jury in 23 (7.2.0%) cases, and the jury agreed that this evidence was mitigating in 15 (65.2%) of those cases. Eight (53.4%) of those defendants received a death sentence.[11] See Table 1 for descriptive data.

Table 1

[11] Given the small number of cases in which severe mental illness was presented to the jury as a non-statutory mitigating factor, jury agreement and subsequent sentencing decisions are only presented descriptively (see Table 1). Hypothesis testing on the relationship between severe mental illness as a mitigating factor and sentencing decision could not be explored with inferential statistics due to insufficient power.

Descriptive Data of Mental Illness-Related Mitigating Factors

				Sentencing Decision	
	Total	Jury Agreed	Jury Disagreed	Death	Life
	N (%)	N (%)	N (%)	N (%)	N (%)
Any mental illness-related factor					
None presented	78 (24.5)	--[a]	--[a]	39 (50)	39 (50)
One + presented	241 (75.5)	176 (73.0)	65 (27.0)	143 (59)	98 (41)
Mental or emotional disturbance					
Not presented	125 (39.2)	--[a]	--[a]	60 (48)	65 (52)
Presented	194 (60.8)	137 (70.6)	57 (29.4)	122 (63)	72 (37)
Capacity to conform/appreciate					
Not presented	113 (35.4)	--[a]	--[a]	65 (57.5)	48 (42.4)
Presented	206 (64.6)	95 (46.1)	111 (53.9)	117 (57)	89 (43)
Non-statutory mental illness-related					
Not presented	231 (72.4)	--[a]	--[a]	125 (54)	106 (46)
Presented	88 (27.6)	52 (59.1)	36 (40.9)	57 (64.8)	31 (35.2)
Severe mental illness					
Not presented	295 (92.8)	--[a]	--[a]	166(62.6)	130(37.4)
Presented	23 (7.2)	15 (65.2)	8 (34.8)	16 (69.6)	7 (30.4)

[a] = Information about jury agreement was unavailable in those cases in which mental illness-related mitigating factors were not presented to the jury.

4.2 Primary hypothesis

To test the primary hypothesis, a binary logistic regression was conducted in which sentencing decision was regressed simultaneously on the three mental illness-related mitigating factors and two control variables (heinousness of the crime and criminal history). Sentencing decision was not significantly related to either jury agreement (b = .24, SE = .39, p = .53) or disagreement (b = .29, SE = .51, p = .57) with mental illness as a non-statutory mitigating factor when it was presented to the jury.

Both statutorily defined mental illness-related mitigating factors were significantly related to sentencing decision. Specifically, when "mental or emotional disturbance" was presented to the jury and the jury *disagreed* with it as a mitigating factor, there was a significantly *higher* probability that the defendant would receive a death sentence than when the jury agreed with it being mitigating (b = 1.06, SE = .47, p = .02, OR = 2.90) or when it was not presented to the jury at all (b = 1.79, SE = .49, $p < .01$, OR = 5.97). A death sentence was about twice as likely when the jury agreed with "mental or emotional disturbance" as a mitigating factor than when this factor was not presented to the jury (b = 7.23, SE = .37, p = .05, OR = 2.06). .

Conversely, when "capacity to appreciate wrongfulness or conform conduct" was presented to the jury and the jury agreed that it was mitigating, there was a significantly *lower* probability that the defendant would receive a death sentence than when the jury disagreed that it was mitigating (b = -1.57, SE = .37, $p < .01$, OR = .21) or when it was not presented to the jury at all (b = -1.44, SE = .42, p = .01, OR = .24). Overall, the primary hypothesis model, including all three mental illness-related mitigating factors and two aggravating control factors, accurately classified 73.3% of capital defendants as receiving a life or death sentence.

A similar pattern of findings was reproduced when (a) all of the statutory aggravating and mitigating factors were included, and (b) when the presentation and subsequent jury agreement with mental retardation as a mitigating factor was included in the primary hypothesis model logistic regression above. As may be seen in Table 2, these models correctly classified 81.2% and 72.7%, respectively, of defendants as receiving a life or death sentence. Further, a similar pattern of findings was reproduced

when the defendant's race (i.e., white or African American) was included as a control variable.[12] This model correctly classified 73.7% of defendants as receiving a life or death sentence.

Table 2

Regression Values for Models with "All Statutory Factors," "Mental Retardation" and Defendant's Race Included

Model with all statutory factors	*Comparison*	*b*	SE_b	*p*	OR^a
Mental or emotional disturbance					
Jury agreement	Jury disagree	-1.03	.57	.07	.36
	Not presented	1.18	.46	.01	3.25
Jury disagreement	Jury agree	1.03	.57	.07	2.81
	Not presented	2.21	.60	<.01	9.13
Capacity to conform/appreciate					
Jury agreement	Jury disagree	-1.55	.45	<.01	.21
	Not presented	-1.63	.50	<.01	.20

Table 2 (continued)

	Comparison	*b*	SE_b	*p*	OR^a
Jury disagreement	Jury agree	1.55	.50	<.01	4.71
	Not presented	-.08	.45	.86	
Non-stat. Mental illness-related					
Jury agreement	Jury disagree	.13	.69	.85	
	Not presented	.12	.48	.81	
Jury disagreement	Jury agree	-.13	.69	.85	
	Not presented	-.01	.60	.98	

Table 2 (continued)

[12] Prior to analyzing race as a control variable, logistic regression analyses were completed to examine the interaction between the presentation of mental illness-related mitigating factors and defendant's race. No significant interaction was observed between the presentation of "mental or emotional disturbance" and defendant's race, "capacity to appreciate or conform conduct" and defendant's race, or non-statutory mental illness-related mitigating factors and defendant's race.

Model with mental retardation	*Comparison*	*b*	SE_b	*p*	*OR*[a]
Mental or emotional disturbance					
Jury agreement	Jury disagree	-1.11	.48	.02	.33
	Not presented	.70	.38	.06	2.02
Jury disagreement	Jury agree	1.11	.48	.02	3.04
	Not presented	1.81	.49	<.01	6.14
Capacity to conform/appreciate					
Jury agreement	Jury disagree	-1.51	.37	<.01	.22
	Not presented	-1.46	.42	<.01	.23
Jury disagreement	Jury agree	1.51	.37	<.01	4.54
	Not presented	.06	.38	.88	
Non-stat. Mental illness-related					
Jury agreement	Jury disagree	.12	.59	.84	
	Not presented	.27	.39	.48	
Jury disagreement	Jury agree	-.12	.59	.84	
	Not presented	.16	.52	.76	
Model with defendant's race					
Mental or emotional disturbance					
Jury agreement	Jury disagree	-1.25	.47	<.01	.29
	Not presented	.41	.37	.27	
Jury disagreement	Jury agree	1.25	.47	<.01	3.01
	Not presented	1.67	.48	<.01	5.27
Capacity to conform/appreciate					
Jury agreement	Jury disagree	-1.60	.35	<.01	.20
	Not presented	-1.18	.41	<.01	.31
Jury disagreement	Jury agree	1.60	.35	<.01	4.50
	Not presented	.42	.38	.27	
Non-stat. Mental illness-related					
Jury agreement	Jury disagree	.34	.59	.59	
	Not presented	.16	.38	.68	
Jury disagreement	Jury agree	-.34	.59	.59	
	Not presented	.16	.37	.33	

[a] = Compares the increased or decreased likelihood of a defendant receiving a death sentence to the probability of receiving a life sentence based on whether the mental illness-related mitigating factor was presented to the jury and whether the jury agreed or disagreed with it when it was presented.

Two logistic regression analyses were completed to explore the relationship between sentencing decision and different combinations of mental illness-related mitigating factors, controlling for heinousness of the crime and criminal history. First,

when sentencing decision was simultaneously regressed on different combinations of mental illness-related mitigating factors that were *presented* to the jury, only the presentation of "mental or emotional disturbance" (b = 1.30, SE = .60, p = .03, OR = 3.68) and the presentation of all three factors (i.e., "mental or emotional disturbance," "capacity to appreciate or conform conduct," and a non-statutory mental illness-related mitigating factor) (b = .646, SE = .38, p = .09, OR = 1.89) were significantly associated with the defendant receiving a death sentence. Secondly, the different combinations of mental illness-related mitigating factors that the jury agreed were mitigating when they were presented were included in the logistic regression (along with criminal history and heinousness of the crime as control factors). This second model correctly classified 71.5% of defendants as receiving a life or death sentence.

Agreement with only "mental or emotional disturbance" as a mitigating factor remained a significant predictor (b = 1.32, SE = .38, p = .01) and was associated with a 3.73 increase in the likelihood of the defendant receiving a *death* sentence as compared to when no mental illness-related mitigating factors were presented to the jury. Jury agreement that both "mental or emotional disturbance" and "capacity to appreciate or conform conduct" were mitigating factors became a significant predictor (b = .90, SE = .41, p = .03) and was associated with a 2.46 increase in the likelihood of the defendant receiving a *life* sentence. Interestingly, when mental illness-related mitigating factors were presented to the jury but the jury did not agree that *any* of them were mitigating, defendants were 3.12 times more likely to receive a *death* sentence than when no mental illness-related mitigating factors were presented (b = 1.14, SE = .38, p = .01).

4.3 Exploratory Hypothesis: Trial Time Period

The relationship between mental illness-related mitigating factors and jury sentencing recommendations before and after (a) the publication of the *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (1989) and (b) the availability of LWOP (1994) was explored by simultaneously regressing sentencing recommendation on the interaction between the presentation of each mental illness-related mitigating factors and the time period of the trial, controlling for heinousness of the crime and criminal history.

There was no significant interaction between the presentation of "mental or emotional disturbance" and time period of the trial (b = .35, SE = .35, p = .32). A sub-analysis examining the interaction between jury agreement with "mental or emotional disturbance" (agree or disagree) when it was presented to the jury and time period of the trial also was not significant (b = .63, SE = .63, p = .32). Similar results were found for "capacity to appreciate or conform conduct" and the non-statutory mental illness-related mitigating factor.

Given the lack of interactions on sentencing decision, trial time period was included in the primary revised research question and associated regression equation, which included each of the three mental illness-related mitigating factors, heinousness of the crime and criminal history. Trial time period alone significantly predicted sentencing decision (b = .88, SE = .21, $p < .01$, OR = 2.40); defendants who were tried before 1989 or between 1989 and 1994 were more likely to receive a life sentence than those defendants who were tried after 1994 (5.57 and 4.16 times more likely, respectively). This model correctly classified 75.9% of defendants as receiving a life or death sentence.

5. Discussion

The results of this study suggest that the relationship between mental illness-related mitigating factors and jury decision making may differ depending on the mitigating factor presented to the jury. Specifically, North Carolina juries appeared to distinguish between the simple presence of mental illness and the presence of mental illness that affected defendants' decision-making and behavior. Compared to cases in which these mitigating factors were not presented to the jury, capital defendants were *less likely* to receive a death sentence when "capacity to appreciate wrongfulness or conform conduct" was presented to the jury, whereas defendants were *more likely* to receive a death sentence if the statutorily defined mitigating factor "mental or emotional disturbance" was presented. Further, neither the presentation of nor jury agreement with non-statutory mental illness-related mitigating factors were significant predictors of sentencing decision. This pattern was consistent regardless of whether only heinousness of the crime and criminal history were accounted for, whether all of the aggravating and mitigating statutory factors were accounted for, or whether mental retardation as a mitigating factor was accounted for. Notably, these results were not affected by the North Carolina sentencing instructions, which mandate a life sentence if the jury does not agree with any aggravating factors presented – there was not a single case in which the jury disagreed with all of the aggravating factors presented.

There are three important implications resulting from this difference. First, the presence of mental illness alone – defined as "mental or emotional disturbance" in North Carolina – may be subject to more distortion and misunderstanding by the jury. In the current study, North Carolina capital defendants were more likely to receive a death sentence if the statutorily defined mitigating factor "mental or emotional disturbance"

was presented, regardless of whether the jury agreed or disagreed that it was in fact mitigating. One explanation for this result is that capital juries may have mistakenly viewed this mitigating factor as an aggravating factor instead. This result is consistent with previous research showing jurors' negative – and often frightful – reactions to mentally ill offenders (Garvey, 2000). Further, laypeople often erroneously view those with mental illness as abnormally dangerous (Link & Stueve, 1998). Feelings of fear and beliefs regarding future dangerousness may be heightened during the sentencing phase of a death penalty trial, a stage at which dangerousness is a concern for the jury and the defendant has already been found guilty of the precipitating crime. Research on death qualified juries lends support to this theory of the use of mental illness as an aggravating factor rather than a mitigating factor, with studies revealing that death qualified capital juries are prone to rejecting arguments for life and are more likely to recommend death sentences (e.g., Butler & Moran, 2007).

An alternative explanation is that capital juries have difficulty understanding capital sentencing instructions, including how they should weigh the presence of aggravating and mitigating factors during the sentencing phase of trial (Polzer & Kempf, 2007). Previous research has shown that many jurors incorrectly believe that the presence of certain aggravating factors requires a death sentence or do not understand how mitigating evidence should be taken into consideration during sentencing determinations (Bentel & Bowers, 2001). The North Carolina juries in the current study, despite finding the presence of "mental or emotional disturbance" mitigating, may have misunderstood the instruction that such evidence should weigh in favor of a life sentence. Additionally, jurors may have mistakenly believed that when such evidence is presented

but not found to be mitigating, it should be weighed as aggravating and in favor of a death sentence. This interpretation raises concerns about capital sentencing instructions and highlights previous researchers' propositions that improvements in such instructions are needed to improve jury comprehension (e.g., Polzer & Kempf, 2007).

Second, consistent with the primary hypothesis, jury agreement with impaired "capacity to appreciate or conform conduct" was a significant predictor of capital defendants receiving a life sentence. This may suggest that juries may afford greater sentencing weight to mitigation that provides "structure" for how evidence of mental illness may impact criminal behavior. As discussed earlier, the design of capital mitigation is to demonstrate lessened moral culpability. Capital jurors in the current study appeared to find defendants less culpable (i.e., more likely to recommend a life sentence) when they believed defendants' mental status at the time of the offense affected their decision making. Conversely, the presence of mental illness or mental and emotional disturbance at the time of the offense – without a specified link to the criminal act – did not decrease jurors' views of defendants' culpability. One explanation for this result is that the former provides the jury with the nexus between mental illness and decreased culpability, whereas the latter forces juries to make this connection themselves.

When "mental or emotional disturbance" is offered as a mitigating factor, defense attorneys need only present evidence of the defendant's mental state or mental illness at the time of the offense. By contrast, the mitigating factor "capacity to appreciate wrongfulness or conform conduct" not only requires similar evidence (e.g., symptoms of mental illness at the time of the offense), but further demands that the defense attorney prove that functional legal capacities are impaired as a result of such symptoms. Without

help from defense attorneys, juries may find it difficult to link mental illness or emotional disturbance with capacity to appreciate criminality or to conform conduct to the law. However, juries shown the mitigating value of defendants' impaired functional capacity may be more likely to recommend life sentences than those for whom no causal link between mental illness and behavior is offered.

Finally, lawyers may incorrectly assume that any mitigation is good mitigation. Instead, lawyers should consider the range of potential impacts of offering, what they view as, mitigating evidence, on the ultimate sentence. In the current study, jurors appeared to view the presence of mental or emotional disturbance at the time of the offense as aggravating regardless of whether they reported agreement with its mitigating value. In fact, even when juries agreed that the presence of mental or emotional disturbance at the time of the offense was mitigating, defendants were more than three and a half times more likely to receive death compared to when the defense attorney did not offer any mental illness-related mitigating factors.

It is possible that jurors viewed the presentation of this factor as a mere defense strategy, attempting to excuse the convicted defendant's behavior. Capital, death-qualified jurors may mistrust defense attorneys and/or the idea that a mental disorder could be an excusing, or even mitigating, condition (Ellsworth, Bukaty, Cowen, & Thompson, 1984; White, 1987). This result raises some concern for capital defense attorneys who are not only unlimited in their ability to present mitigating evidence (*Lockett v. Ohio*, 1978), but are constitutionally required to conduct a thorough investigation to determine possible mitigating evidence (*Wiggins v. Smith*, 2003). If evidence of mental or emotional disturbance at the time of the offense is discovered,

capital defense attorneys will need to decide whether they should strategically, and are ethically permitted to, withhold such evidence from the jury. Conversely, if possible, it appears more beneficial for a defense attorney to present evidence of mental illness within the context of impaired functional capacity, thereby showing the jury why such evidence may in fact be mitigating.

The current results provide mixed support for the primary hypothesis that jury agreement with the presented mental illness-related mitigating factors would predict a greater probability that the jury would recommend a life sentence as compared to when the jury disagreed that the presented factor was mitigating or when the factor was not presented to the jury at all. This hypothesis was based on both extant research (e.g., Barnett, Brodsky & Davis, 2004; Barnett, Brodsky & Price, 2007) and the growing body of commentary calling for the exclusion of offenders with severe mental illness from receiving the death penalty (e.g., Batey, 2009). Nonetheless, the results of this study *are* consistent with the mixed results found in previous research suggesting that juries may find evidence related to a defendant's mental illness to be either mitigating or aggravating. The finding that capital defendants were more likely to receive a death sentence if the statutorily defined mitigating factor "mental or emotional disturbance" was presented is supported by previous research suggesting that juries find evidence of severe mental illness aggravating (Berhman, 1989; Ryan & Berson, 2006) and may be more likely to recommend death when such evidence is presented (White, 1987).

Conversely, the current results also suggest that jurors find a defendant's impaired capacity at the time of the offense sufficiently mitigating to warrant a life sentence. Such an interpretation is supported by previous research (e.g., Barnett, Brodsky & Davis, 2004;

Barnett, Brodsky, & Price, 2007) and current criminal law, including legal standards for the insanity defense (e.g., 18 U.S.C. § 17; Model Penal Code § 4.01(1), 1962) and the categorical exclusion of offenders from being executed if they are found incompetent for execution (*Panetti v. Quarterman*, 2007). It also supports Connecticut's categorical exclusion of defendants from receiving a death sentence (Conn. Gen. Stat. § 53a-46a(h), 2009) as well as the ABA's joint recommendation for the categorical exclusion of defendants with severe mental illness at the time of the offense from receiving a death sentence[13] (ABA, 2006). However, a previous study of mock jurors (undergraduate students) found that approximately one quarter of participants incorrectly identified a similarly worded mitigating factor as an aggravating factor (Haney & Lynch, 1994). The current study suggests that actual capital juries as a whole may find this factor sufficiently mitigating to warrant a life sentence. Differences in participants (e.g., actual capital juries vs. undergraduate students), units of analysis (juries vs. individuals), state statutes (North Carolina vs. California), and/or independent variables (sentence received vs. identifying aggravating or mitigating factor) between the two studies may also explain the different findings.

5.1 Implications for Policy and Practice

One purpose of the current study was to provide lawyers, judges, and policy makers with information relevant to categorically excluding defendants with severe

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[13] The joint recommendation is that if, at the time of the offense, defendants "had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law," they should not be executed or sentenced to death (ABA, 2006, p. 668).

mental illness from receiving the death penalty. Although the presentation of severe mental illness as a mitigating factor could not be examined due to the small number of cases in which this information was presented, implications for legal policy may still be found. Capital jurors appeared to find defendants less culpable (i.e., more likely to recommend a life sentence) when the defendants' mental status at the time of the offense affected their decision making. Conversely, the presence of mental illness or mental and emotional disturbance at the time of the offense, without a specified link to the criminal act, did not decrease jurors' views of defendants' culpability. Similar to other areas of law, in which mental illness alone does not excuse the offenders' actions, the current results do not support a categorical exclusion based on mental illness alone. Instead, these findings, if replicated on a national scale, support a policy that might exclude defendants who were not rational or whose capacity to appreciate or conform their conduct at the time of the offense was impaired but did not rise to the level required of an insanity defense. Similar to an insanity defense, such an exclusion may be appropriately conducted on a case-by-case basis using a functional standard. Although defendants' mental illness may certainly affect their rationality at the time of the offense, jurors may not be ready to exclude based on mental illness alone.

Additionally, this study highlights the importance of the voir dire process for defense attorneys in capital trials. Capital defendants have the right to a "life-qualified" jury (*Morgan v. Illinois*, 1992). Capital defense attorneys should, therefore, ask potential jurors whether or not they will automatically sentence a defendant to death upon conviction or upon being presented with certain mitigating evidence, such as the presence of mental illness. This will aid defendants' right to a life-qualified jury by finding out

which potential jurors would sentence a defendant to death without weighing all of the evidence presented. However, people's predictions of their behavior regularly differ from their actual behavior (Gosling, John, Craik & Robins, 1998), making this approach fair but potentially ineffective.

The current findings also emphasize the importance of educating the jury on mental health-related mitigating factors. A defense attorney should thoughtfully decide whether to present evidence of mental illness to , and, if answered in the affirmative, how to most effectively demonstrate its connection with the defendant's decision-making and behavior at the time of the offense. Obtaining a mental health expert can assist the lawyer in this regard. Mental health experts' capital sentencing evaluations must remain unbiased regardless of the relationship between mental health-related mitigating factors and jury sentencing determinations. However, the rate of jury disagreement with evidence offered as mitigating factors and the potential for jury misunderstanding of mitigation presented and capital sentencing instructions generally suggest that if a mental health expert believes there to be mental health-related factors that do in fact mitigate culpability, the expert should take the time to educate the jury to this end.

5.2 Limitations

The current study sought to examine the relationship between mental illness-related mitigating factors and actual jury sentencing recommendations. Its scope was limited to studying the treatment of mental illness in actual capital jury sentencing recommendations, which is one of the objective indicia of community values used to determine whether imposing this punishment is cruel and unusual. It did not address social implications of categorically excluding offenders with mental illness at the time of

the offense from receiving a death sentence, nor did it attend to the constitutionality of the death penalty in general. The interpretation of the findings also is limited to the extent that they are generalizable beyond the sample used in the current study.

North Carolina's capital trial procedures and sentencing statute appear similar to those in the majority of other states that still impose the death penalty. Nonetheless, there may be concerns about generalizability given that only publically available cases from North Carolina were studied. For example, North Carolina juries may be different in their decision-making processes than juries in other jurisdictions. Additionally, this study was limited to cases that were tried between 1982 and 1998. Although the North Carolina statute has not changed significantly since 1998, there have been shifts in views regarding the death penalty since that time (e.g., *Roper v. Simmons*, 2005). Further, the current study suggests that time period of the trial also may have been a significant predictor of sentence received. Last, only male defendants were included in the current study as a way to limit variability and control for extraneous factors. Female capital defendants are extremely rare and executions of females on death row even less frequent (Streib, 2005). The interpretations of the current findings are unlikely to generalize to the few women who are tried for capital crimes.

The current study's methodology also limits the interpretation of findings. Some alternative explanations or confounding variables could be accounted for using the designated archival dataset. For example, there was limited information in the dataset on the quality of representation afforded the defendant or on the quality of mental health experts testifying at trial. Additionally, the dataset did not include information about whether or not the defendant admitted to the offense, information that would have helped

differentiate between the two statutory mental illness-related mitigating factors and their relationships to jury sentencing determinations. Nonetheless, interpretation of the current findings provides a solid foundation for future research.

5.3 Future research

The current study extends the small body of literature examining mental health-related mitigation in death penalty proceedings and offers insight for future research. Commentators, professional organizations, and the international community limit their recommendations to categorically excluding offenders with severe mental illness from receiving death sentences. However, given the low rates of severe mental illness as a mitigating factor in the current study, it lacked sufficient power to analyze its relationship with sentencing decision. Further research, therefore, is needed to examine the relationship between severe mental illness and capital sentencing. Larger data sets, cases from multiple jurisdictions, and data from more recent cases (i.e., post-*Atkins* or -*Roper*) may be needed to obtain sufficient power. In addition, research from multiple jurisdictions and more recent cases is needed to evaluate generalizability of the current findings and to aid in determining policy implications for capital defendants with mental illness-related impairments at the time of the offense.

The relationship between mental illness-related mitigating factors and jury sentencing recommendations remains unclear. The current study suggests that when capital juries find mitigating value in a defendants' impaired functional capacity, they may be more likely to recommend a life sentence than when no causal link between mental illness and behavior is offered. Replication of the current study with additional death penalty jurisdictions will provide generalizability to the current results. Future

research is also needed to more directly examine capital jury decision-making with regards to the presence of mental illness at the time of the offense. Studies with either mock or actual juries should focus on the why jurors have difficulty finding sufficient mitigating value (i.e., recommend a life sentence) when presented with the simple presence of mental illness. Last, more research is needed to determine whether a policy that might exclude defendants whose functional capacity was impaired by mental illness, but did not to the level required of an insanity defense, and the practicality of conducting this exclusion on a case-by-case basis. Given the importance of mitigating evidence to the capital defendant and the fact that "death is different," (Ford v. Wainwright, 1986, p. 412) further research in this area is necessary.

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Appendix A. North Carolina Statutorily Enumerated Aggravating Factors
N.C.G.S.A. § 15A-2000 (1982-1998)

Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

(e) Aggravating Circumstances.--Aggravating circumstances which may be considered shall be limited to the following:

(1) The capital felony was committed by a person lawfully incarcerated.

*(2) The defendant had been previously convicted of another capital felony. [*or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult*.]

*(3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person. [*or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.*]

(4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(6) The capital felony was committed for pecuniary gain.

(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.

*(9) The capital felony was especially heinous, atrocious, or cruel.

(10) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

*: Control variables
[*italicized portion*]: Added in 1994 & 1995 amendments

Appendix B. North Carolina Statutorily Enumerated Mitigating Factors
N.C.G.S.A. § 15A-2000 (1982-1998)

Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence

(f) Mitigating Circumstances.--Mitigating circumstances which may be considered shall include, but not be limited to, the following:

(1) The defendant has no significant history of prior criminal activity.

*(2) The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.

(3) The victim was a voluntary participant in the defendant's homicidal conduct or consented to the homicidal act.

(4) The defendant was an accomplice in or accessory to the capital felony committed by another person and his participation was relatively minor.

(5) The defendant acted under duress or under the domination of another person.

*(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired.

(7) The age of the defendant at the time of the crime.

(8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

*(9) Any other circumstance arising from the evidence which the jury deems to have mitigating value. *(e.g., mental illness/ MI)*

* = Mental Illness-Related Mitigating Factor

Vita

Melinda Faye Wolbransky

Drexel University, Philadelphia, PA.
Ph.D. Clinical Psychology, forensic concentration, Expected July 2012.
M.S. & B.S., Psychology, June 2006. (*Summa Cum Laude*)

Villanova University School of Law, Villanova, PA.
J.D., December, 2010. (*Summa Cum Laude*)

Recent Honors & Awards

AP-LS Student Travel Award, International Conference in San Juan, Puerto Rico (2012).
Order of the Coif, Member of the Villanova School of Law Chapter (2011).
ABA/BNA Award for Excellence in Study of Health Law, academically based (2011).
Wyn Llewellyn Award for ABA Client Counseling Competition, First Place (2011).
Public Interest Fellowship Program, Solicitations Coordinator (2010-2011) & Fellow.
Villanova Law Review, Managing Editor of Production (2009-10); Staff Writer (08-09).

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